

IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF OKLAHOMA

**FILED**

NOV 25 2009

MICHAEL R. CONROY,

Plaintiff,

vs.

TOM KUTAY

Defendant.

ROBERT D. DENNIS, CLERK  
U.S. DIST. COURT, WESTERN DIST. OF OKLA.  
BY Wk DEPUTY

No. CIV-09-928-W

**ORDER**

On October 30, 2009, United States Magistrate Judge Valerie K. Couch issued a Report and Recommendation in this matter and recommended not only that the complaint filed by plaintiff Michael R. Conroy, proceeding pro se, be dismissed, but also that the dismissal be counted as a "prior occasion" or "strike" pursuant to title 28, section 195(g) of the United States Code. Conroy was advised of his right to object to the Report and Recommendation, but no objection has been filed within the allotted time.<sup>1</sup>

Upon review of the record, the Court concurs with Magistrate Judge Couch's suggested disposition of this matter. Conroy named as the sole defendant in this case, Tom Kutay, who was identified as the Logan County Deputy Sheriff who conducted the investigation giving rise to Conroy's arrest and conviction.

Conroy has grounded his claims and his prayer for relief on his contention that Kutay accepted a bribe—the "gift" of a computer—from the complaining witness. In his prayer for relief, he has requested that Kutay

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<sup>1</sup>On November 4, 2009, the Clerk of the Court mailed Magistrate Judge Couch's Report and Recommendation to the address listed by Conroy in his complaint: 216 S. Broad Street, Guthrie, Oklahoma 73044. See Rule 5.5(a), Rules of the United States District Court for the Western District of Oklahoma (papers sent to last known address deemed delivered).

be barred from acting in any law enforcement capacity or office for a minimum of five years and face any other legal sanctions and/or charges applicable under federal law.


Complaint at 5, Section E.

The Court finds under Rule 12(b)(6), F.R.Civ.P., that Conroy's complaint fails to contain "enough facts to state a claim to relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007). The Court further finds that Conroy is, in essence, seeking a writ of mandamus under title 28, section 1361 of the United States Code, and extant case law teaches that this Court is without jurisdiction under section 1361 to order such relief in connection with a state officer.

Accordingly, the Court

- (1) ADOPTS the Report and Recommendation issued on October 30, 2009;
- (2) DISMISSES Conroy's complaint file-stamped August 2, 2009, for failure to state a claim to relief under Rule 12(b)(6) and for lack of subject matter jurisdiction;
- (3) DISMISSES with prejudice Conroy's request for mandamus relief; and
- (4) ORDERS that this dismissal shall be counted as a "prior occasion" or "strike" pursuant to section 1915(g) after Conroy has exhausted or waived his right to appeal.

ENTERED this 25<sup>th</sup> day of November, 2009.

  
LEE R. WEST  
UNITED STATES DISTRICT JUDGE